

1 This request is based upon the pleadings and papers on file herein, the attached
2 Memorandum of Points and Authorities, and any oral argument the Court may
3 entertain.
4

5 DATED this 27th day of November, 2019.

6 HOFLAND & TOMSHECK

7 By: /s/ J. Tomsheck
8 JOSHUA TOMSHECK, ESQ.
9 Nevada State Bar No. 009210
10 228 S. 4th Street, 1st Floor
11 Las Vegas, NV 89101
12 Attorney for Defendant

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. STATEMENT OF FACTS**

15 On December 8, 2017, a Criminal Complaint was filed charging the Defendant,
16 David Howard Babit, with One (1) Count of Sexual Exploitation of Children, in violation
17 of 18 U.S.C. § 2251(a) and (e), One (1) Count of Receipt of Child Pornography, in
18 violation of 18 U.S.C. § 2252A(a)(2) and (b), and One (1) Count of Possession of Child
19 Pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B).
20

21 A preliminary hearing has been set for March 24, 2020.

22 **II. LEGAL ARGUMENT**

23 A presentence investigation may be initiated prior to entry of a guilty plea or nolo
24 contendere or prior to the establishment of guilt. *See generally* Fed. R. Crim. P. 32.

25 Counsel requires a pre-plea presentence investigation report to determine the
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1 personal history category and the criminal history category applicable to Mr. Babit.

2 A pre-plea PSR will promote judicial economy and could greatly expedite the
3 manner in which this case is resolved, as this case is close to resolution by way of
4 negotiation. Furthermore, Mr. Babit consents to the pre-plea presentence investigation.
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6 Counsel has spoken to the Government and they do not oppose the instant
7 motion.

8
9 **III. CONCLUSION**

10 Based on the foregoing, Defendant asks this Court to grant his Unopposed
11 Motion to Conduct a Pre-Plea Presentence Investigation Report. Defendant further
12 requests this Court order the United States Department of Parole and Probation to
13 conduct a pre-plea presentence investigation report of Mr. Babit as soon as possible.
14

15
16 DATED this 27th day of November, 2019.

17 **HOFLAND & TOMSHECK**

18
19 /s/ J. Tomsheck
20 JOSHUA TOMSHECK, ESQ.
21 Counsel for Defendant

22 IT IS SO ORDERED.

23 
24 RAYMOND J. ZOUCHEK
25 UNITED STATES MAGISTRATE JUDGE

26 Dated: December 2, 2019